

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'ए' मुंबई

IN THE INCOME TAX APPELLATE TRIBUNAL

"A" BENCH, MUMBAI

श्री पी.एम. जगताप, लेखा सदस्य, एवं श्री अमित शुक्ला, न्यायिक सदस्य के समक्ष

BEFORE SHRI P.M. JAGTAP, ACCOUNTANT MEMBER AND

SHRI AMIT SHUKLA, JUDICIAL MEMBER

आयकर अपील सं. / ITA no. 5045/Mum./2011

(निर्धारण वर्ष / Assessment Year : 2006-07)

M/s. Krishna Land Developers Pvt. Ltd.
7th Floor, Corporate Centre
Opp. Hotel Loitus Suites
Andheri (E), Mumbai 400 059

..... अपीलार्थी /
Appellant

बनाम v/s

Asstt. Commissioner of Income Tax
Circle-2(2), Mumbai

..... प्रत्यर्थी /
Respondent

स्थायी लेखा सं./ Permanent Account Number – AABCK9566F

निर्धारिती की ओर से / Assessee by : Mr. Rakesh Joshi

राजस्व की ओर से / Revenue by : Ms. Anu Krishna

सुनवाई की तारीख /
Date of Hearing – 01.08.2012

आदेश घोषणा की तारीख /
Date of Order – 08.08.2012

आदेश / ORDER

अमित शुक्ला, न्यायिक सदस्य के द्वारा /
PER AMIT SHUKLA, J.M.

The present appeal preferred by the assessee, is directed against the impugned order dated 27th April 2011, passed by the learned Commissioner (Appeals)–V, Mumbai, for the quantum of assessment passed under section 143(3) of the Income Tax Act, 1961 (for short "the Act") for assessment year 2007–08, on the following grounds:-

"1. On the fact and circumstances of the case as well as in Law, the Learned CIT(A) has erred in confirming the action of Assessing Officer in treating the Business Centre(I.T Park) Income as Income From House Property instead of Business Income without considering the facts & circumstances of the case.

2. On the fact and circumstances of the case as well as in law, the Learned CIT(A) has erred in confirming the action of Assessing Officer in disallowing the claim of all expenses without considering the facts & circumstances of the case.

3. On the fact and circumstances of the case as well as in Law, the Learned CIT(A) has erred in confirming the action of Assessing Officer in disallowing the claim of deduction u/s 801A(4)(iii) of Income Tax Act, 1961 without considering the facts & circumstances of the case.

4. On the fact and circumstances of the case as well as in Law, the Learned CIT(A) has erred in confirming the action of Assessing Officer in adding on ad-hoc basis the interest that would have been earned on the deposit taken from the IT company client who was occupying the premises of the appellant as Income From House Property of the appellant for the year without considering the facts & circumstances of the case."

2. At the outset, the learned Counsel for the assessee submitted before us that all the grounds of appeal are covered in favour of the assessee by the co-ordinate bench decision being **ITA no.1057/Mum./2010, vide order dated 12th August 2011**, in assessee's own case for assessment year 2005-06, a copy of which is placed on record.

3. On the other hand, the learned Departmental Representative fairly conceded with the submissions made by the learned Counsel for the assessee.

4. After going through the orders of the authorities below, it is seen that the learned Commissioner (Appeals) has followed the conclusions drawn by him in the immediately preceding year i.e., A.Y. 2005-06 and has decided the issue against the assessee. The said order has been reversed by the Tribunal in assessee's own case cited supra. The issue raised in ground no.1, has been dealt with and discussed vide Para-13 of the order dated 12th August 2011 (supra), passed by the Tribunal in assessee's own case, which reads as follows:-

13. The undisputed fact is that the property in question is an I.T. Park, with all infrastructure facilities and services. This is not a simple building. The Ministry of Commerce and Industries, notifies certain building as I.T. Park only if various facilities and infrastructure, as specified by the Department, are provided. It is an undisputed fact that all the technical requirements, infrastructures, facilities and services are being provided in this building and it was only for this reason that not only the Ministry of Commerce & Industries, but also the CBDT notified the same as an I.T. Park which entitles the assessee to earn certain incentives. The intention of the assessee while purchasing the property is to participate in the I.T. Park and it cannot be said that the intention is only to invest in property. The Hon'ble Supreme Court in *Shanbhu Investments P. Ltd. (supra)*, clearly lays down that what is to be seen was the primary object of the assessee while exploiting the property. If it is found by applying such test, that the main intention is to let out the property, it must be considered as rental income or income from property. In case it is found that the main intention is to exploit the property by way of complex commercial activities, in that event, it must be held as business income. In the case before us, the assessee is offering complex services by way of providing operation place in a notified I.T. Park, with all services and amenities such as infrastructure facilities, waiting room, conference room, valet parking, reception, canteen, 24 hours securities, internal facilities, high speed lift, power back-up, etc. Just because a sister concern incurred this expenditure and claims reimbursement from the assessee, it cannot be said that the facilities are not provided by the assessee. Whoever maintains them, the fact remains that it is the assessee who ultimately bears such expenditure for the services and undertakes to provide such services. The facilities are made available by the assessee to the person occupying the premises. Coming to the case laws in *Saptarshi Services Ltd. (supra)*, the Hon'ble Gujarat High Court held that the income earned from business centre is to be assessed under the head "Income From Business & Profession". The Special Leave Petition filed by the Revenue against this judgment was rejected by the Hon'ble Supreme Court which is reported as 264 ITR (St.) 36. Coming to the decision of the Mumbai Bench of the Tribunal in *Harvindarpal Mehta (supra)*, the Tribunal, in this decision, after considering the judgment in *Shambhu Investments P. Ltd.*, held that the income earned from business centre is to be assessed under the head "Income From Business & Profession". The decision of Mumbai Bench of the Tribunal in *Shanaya Enterprises (supra)* held that when the property is used for specific purposes and in the nature of providing complex services, the income is taxable under the head "Income From Business & Profession". Applying the propositions laid down in these case laws, we hold that the property can be used only for a specific purpose i.e., I.T. operation and the assessee has provided complex service facilities and infrastructure for operating such business and on this factual matrix, we uphold the contention of the assessee that the income in question should be assessed under the head "Income From Business & Profession". Consequently, we set

aside the order passed by the Commissioner (Appeals) and allow the ground raised by the assessee."

5. Keeping in view the aforesaid findings of the Tribunal, we set aside the impugned order passed by the learned Commissioner (Appeals) and allow ground no.1, raised by the assessee.

6. Grounds no.2 and 3, are consequential to ground no.1, which has been dealt by the Tribunal in Para-14, vide its order dated 12th August 2011 cited supra, which reads as follows:-

"14. Coming to grounds no.2 and 3, the Assessing Officer is directed to allow the claim of expenses as the disallowance was made only on the ground that the income is assessable under the head "House Property". Consequent to our decision in ground no.1, we direct the Assessing Officer to allow both the expenditure claimed as well as the claim for deduction under section 80IA(4)(iii). Consequently, we set aside the order passed by the Commissioner (Appeals) and allow the ground no.2 and 3 raised by the assessee."

7. Following the aforesaid findings of the Tribunal, we allow the grounds no.2 and 3, raised by the assessee.

8. Similarly, ground no.4, is also consequential to ground no.1, which has been decided by the Tribunal in Para-16, vide order dated 12th August 2011, which reads as follows:-

16. Now it is well settled that notional interest on deposits cannot be taken into consideration for determining the annual letting value, as held by the Full Bench of Hon'ble Delhi High Court in Moni Kumar Subba (supra). In any event, as we have held that the income in question is assessable under the head "Income From Business", the addition made under section 23(1)(a) is to be necessarily deleted. Consequently, we set aside the order passed by the Commissioner (Appeals) and allow the ground raised by the assessee.

9. Thus, following the aforesaid decision of the Tribunal, we allow ground no.4, raised by the assessee.

10. परिणामतः निर्धारिती की अपील स्वीकृत की जाती है ।

10. In the result, assessee's appeal is allowed.

आदेश की घोषणा खुले न्यायालय में दिनांक: 8th August 2012 को की गई ।
Order pronounced in the open Court on 8th August 2012.

Sd/-

पी.एम. जगताप

लेखा सदस्य

P.M. JAGTAP

ACCOUNTANT MEMBER

Sd/-

अमित शुक्ला

न्यायिक सदस्य

AMIT SHUKLA

JUDICIAL MEMBER

मुंबई MUMBAI, दिनांक DATED: 8th August 2012

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

- (1) निर्धारिती / The Assessee;
- (2) राजस्व / The Revenue;
- (3) आयकर आयुक्त(अपील) / The CIT(A);
- (4) आयकर आयुक्त / The CIT, Mumbai City concerned;
- (5) विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / The DR, ITAT, Mumbai;
- (6) गार्ड फाईल / Guard file.

सत्यापित प्रति / True Copy

आदेशानुसार / By Order

प्रदीप जे. चौधरी / Pradeep J. Chowdhury

वरिष्ठ निजी सचिव / Sr. Private Secretary

उप / सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai